

Message

From: Bradfish, Larry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CC7D6886AC1D46B19137244A517F457F-LBRADFIS]
Sent: 5/1/2018 2:35:29 PM
To: Lancaster, David@Waterboards [David.Lancaster@Waterboards.ca.gov]
CC: Alasti, Isabella@DTSC [Isabella.Alasti@dtsc.ca.gov]
Subject: RE: ARAR Table for FS/RAP for Area 40

Contaminated soil sites where removals have occurred are not usually monitored. They are sampled until soil levels are below action levels. Neither 23 CCR nor 92-49 support monitoring of any location where contaminated soils have been removed. If it is not possible to remove contaminated soil to below action levels and the remaining contaminated soil must be contained in place, then Chap. 15 would apply.

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From: Lancaster, David@Waterboards [mailto:David.Lancaster@Waterboards.ca.gov]
Sent: Friday, April 27, 2018 6:17 PM
To: Bradfish, Larry <Bradfish.Larry@epa.gov>
Cc: Alasti, Isabella@DTSC <Isabella.Alasti@dtsc.ca.gov>
Subject: RE: ARAR Table for FS/RAP for Area 40

Larry,

I'm not sure I follow what you're saying. How do you propose that the Chapter 15 ARAR language be narrowed? I'll need to confer with Alex, but the scenario you're proposing sounds more technical than legal. I'm having some difficulty envisioning a situation where we can say with certainty that all of the contaminated soil has been removed, such that monitoring is no longer required. In any event, I don't see how that scenario eliminates Chapter 15 as an ARAR.

Best,
David A. Lancaster
Attorney, Regional Board Legal Services—Region 5
State Water Resources Control Board | Office of Chief Counsel

From: Bradfish, Larry [mailto:Bradfish.Larry@epa.gov]
Sent: Friday, April 27, 2018 4:19 PM
To: Lancaster, David@Waterboards <David.Lancaster@Waterboards.ca.gov>
Subject: RE: ARAR Table for FS/RAP for Area 40

Hi David,

I don't disagree that as part of the remedy, if wastes are kept in place, Chapter 15 would apply. However, those areas where the contaminated soils have been removed and hauled offsite should not be subject to Chap 15 requirements. The language in the ARARs table: "Applies to all areas in which waste has been discharged to land" would include wastes in

soil that have been excavated and removed from the site, leaving no wastes behind to monitor or “close” under Chap. 15. If we can narrow or delete this language, then I don’t have a problem keeping them as ARARs.

Larry

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From: Lancaster, David@Waterboards [<mailto:David.Lancaster@Waterboards.ca.gov>]
Sent: Friday, April 27, 2018 3:33 PM
To: Bradfish, Larry <Bradfish.Larry@epa.gov>
Cc: Alasti, Isabella@DTSC <Isabella.Alasti@dtsc.ca.gov>
Subject: RE: ARAR Table for FS/RAP for Area 40

Hello Larry,

It looks like we will have to *agree to disagree* on this issue.

Chapter 15 of Title 23 applies to cleanups involving containment, in-situ treatment and any other non-removal remedial actions, regardless of whether a “waste management unit” is involved. (See Cal. Code Regs., tit. 23, § 2511, subd. (d) [“remedial actions intended to contain ... wastes at the place of release shall implement applicable provisions of this chapter to the extent feasible”].) Section 2510 of Title 23 is not to the contrary.

Ultimately, we are only talking about potential ARARs in a Feasibility Study. I see no reason not to keep Alex’s table *as-is*.

Best,
David A. Lancaster
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From: Bradfish, Larry [<mailto:Bradfish.Larry@epa.gov>]
Sent: Wednesday, April 25, 2018 2:22 PM
To: Lancaster, David@Waterboards <David.Lancaster@Waterboards.ca.gov>
Cc: Alasti, Isabella@DTSC <Isabella.Alasti@dtsc.ca.gov>
Subject: FW: ARAR Table for FS/RAP for Area 40

David,

I am looking over the ARARs table that Alex modified. I hope to have some comments on it in the next few days. However, there is one issue that has surfaced again that was a sticking point with the Regional Board during our ARARs discussions for the OU-6 ROD. There are many ARARs in this table with citations to 23 CCR and 27 CCR. In just about all of them in the “Action to be taken to Attain Requirements” column, the text states that the requirement(s) apply to “all areas in which waste has been discharged to land” My reading of the citations to 23 CCR and 27 CCR indicate to me that, except for certain circumstances set out below, it is not any discharge of waste to land but discharges of waste to “waste management units.” 27 CCR sec. 20380 and 23 CCR section 2510 both define “waste management unit” to include surface impoundments, waste piles, landfills and land treatment units. The regulations do not seem to be governing all discharges to land but discharges to these specific types of units. I am not sure what the

basis is for the state's interpretation that these regulations apply to all discharges to land. In 23 CCR section 2510, the first sentence states: "The regulations in this chapter pertain to water quality aspects of waste discharge to land." Perhaps that is the basis for concluding that the regulations apply to all discharges to land. But the following sentence qualifies and clarifies what type of discharges to land the regulations are addressing: "The regulations in this chapter establish waste and site classifications and waste management requirements for waste treatment, storage, or disposal in landfills, surface impoundments, waste piles, and land treatment facilities." Later in this same section there is reference to Resolution 92-49 for justification for applying the regulations to cleanup and abatement actions: "In addition, the requirements of this chapter apply to the cleanup and abatement actions for unregulated discharges to land of hazardous waste (e.g. spills) taken pursuant to PIII.F.2 of SWRCB Resolution 92-49"

The provision cited above, Resolution 92-49, Part III, F.2., states:

"F. Require actions for cleanup and abatement to:

1. Conform to the provisions of Resolution No. 68-16 of the State Water Board, and the Water Quality Control Plans of the State and Regional Water Boards, provided that under no circumstances shall these provisions be interpreted to require cleanup and abatement which achieves water quality conditions that are better than background conditions;

2. Implement the provisions of Chapter 15 that are applicable to cleanup and abatement, as follows:

a. If cleanup and abatement involves corrective action at a waste management unit regulated by waste discharge requirements issued under Chapter 15, the Regional Water Board shall implement the provisions of that chapter;

b. If cleanup and abatement involves removal of waste from the immediate place of release and discharge of the waste to land for treatment, storage, or disposal, the Regional Water Board shall regulate the discharge of the waste through waste discharge requirements issued under Chapter 15, provided that the Regional Water Board may waive waste discharge requirements under WC Section 13269 if the waiver is not against the public interest (e.g., if the discharge is for short-term treatment or storage, and if the temporary waste management unit is equipped with features that will ensure full and complete containment of the waste for the treatment or storage period); and

c. If cleanup and abatement involves actions other than removal of the waste, such as containment of waste in soil or ground water by physical or hydrological barriers to migration (natural or engineered), or in-situ treatment (e.g., chemical or thermal fixation, or bioremediation), the Regional Water Board shall apply the applicable provisions of Chapter 15, to the extent that it is technologically and economically feasible to do so; and

3. Implement the applicable provisions of Chapter 16 for investigations and cleanup and abatement of discharges of hazardous substances from underground storage tanks;"

My understanding of this provision is that 23 CCR, Chap. 15 requirements apply to 1) corrective action at a waste management unit regulated by Chap. 15 waste discharge requirements; 2) waste (spills) that have been cleaned up (removed) and will be disposed (or treated or stored) of pursuant to Chap. 15 regulations; and 3) waste left in the ground and contained by physical and hydrological barriers.

Based on the language of 23 CCR 2510 and 92-49, Part III.F.2, Chapter 15 of 23 CCR would apply to following situations at OU-10:

- Cleanup or closure of any existing waste management units (landfills, surface impoundments, waste piles, land treatment facilities) on OU-10
- Onsite (in OU-10) disposal of hazardous wastes removed from one part of OU-10 and placed into a Chap. 15 approved waste management unit located within OU-10.
- Cleanup of wastes on OU-10 where some of the wastes still remain in place and will be maintained by physical or hydrological barriers (caps?)

I don't think 23 CCR, Chap. 15 applies where there was an existing discharge of hazardous wastes to land (not in a waste management unit) that has been completely removed as part of the OU-10 remedial action and will be disposed at a location not within OU-10. The CERCLA offsite rule would apply to disposal not within the Aerojet superfund site. Chapter 15 requirements would apply if the wastes are disposed somewhere else onsite but not within OU-10. However, in that situation, Chapter 15 would not be an ARAR for OU-10, but it would be for the OU where the onsite disposal occurs.

Please let me know your thoughts on this. We can agree to disagree, as Alex has suggested, but if we can find common ground, that would be a better outcome.

Larry

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From: MacDonald, Alex@Waterboards [<mailto:Alex.MacDonald@waterboards.ca.gov>]
Sent: Saturday, April 21, 2018 12:26 PM
To: Keller, Lynn <Keller.Lynn@epa.gov>; Bradfish, Larry <Bradfish.Larry@epa.gov>; Black, Stewart@Waterboards <Stewart.Black@Waterboards.ca.gov>; MacNicholl, Peter@DTSC <Peter.MacNicholl@dtsc.ca.gov>; Lancaster, David@Waterboards <David.Lancaster@Waterboards.ca.gov>; Alasti, Isabella@DTSC <Isabella.Alasti@dtsc.ca.gov>
Cc: Fennessy, Chris <christopher.fennessy@rocket.com>
Subject: ARAR Table for FS/RAP for Area 40

I have taken the compilation provided by Chris Fennessy and modified it by moving some of the ARARs as discussed:

Each of three ARAR categories has a subsection listed as State-listed to provide those ARARs the State has provided, but EPA may not necessarily agree with. Those we believe should be included, and must be there for the RAP. The ARARs that came primarily from the OU 6 process are provided as agreed-upon ARARs by all parties and are listed first in each category.

Peter supplied the DTSC ARARs and I have included them in the table - they are highlighted in a light greenish color and all were placed in the State-only sections as I did not see them in the previous tables and do not know if USEPA agrees with them or not.

There are several that may be able to be eliminated - 100-year floodplain as an example. The PCB ARAR has been eliminated as PCBS are not an issue at Area 40.

It should be kept in mind that some ARARs are needed for facilities that may take and treat perchlorate contaminated soils from Area 40 on Aerojet property. Regional Board believes they are needed for the cleanup areas themselves and they have already been included in the State-only ARARs sections.

We should get a resolution on this for Aerojet by this Friday (27th) so that Aerojet can finalize the FS and get the Draft RAP out to the public on time (1 May).

Alex